

ZONING BOARD OF APPEALS
MEETING MINUTES
December 10, 2013
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present: Deland Davis James Moreno
Greg Dunn Carlyle Sims
Sharon Heisler John Stetler

Members Excused: Rick Barnes and Becky Squires

Staff Present: Marcel Stoetzel, Assistant City Attorney
Christine Hilton, Planning Supervisor
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

CORRESPONDANCE: Mr. Nelson Karre handed-out an email document he received originally from Mr. Steve Buller stating his findings from a courtesy walk through inspection of 439 W. Columbia Ave. per Mr. Christian's request.

OLD BUSINESS: None

Mr. John Stetler, Chairperson stated the meeting procedure where everyone present may speak either for or against an appeal and that he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. Stetler stated if denied the petitioner may appeal to the Circuit Court.

NEW BUSINESS:

A) Zoning Use Variance Appeal #Z-06-13:

Petition from Mr. R. B. Christian & Son, Inc., Mr. Richard B. Christian, 439 W. Columbia Ave., Battle Creek, MI 49015. Request is for a Use Variance to allow two(2) residential apartments on a property zoned "C-3 Intensive Business District"; also known as: 439 W. Columbia Avenue (Parcel #6460-11-468-0); application is requested pursuant to Planning and Zoning Code, Chapter 1264.03.

Mr. Glenn Perian, Senior Planner, Planning Department outlined the report stating appeal #Z-03-13 is a petition from R.B. Christian and Sons Inc., seeking approval of a Use Variance to allow two residential apartments on property located in a C-3 zoning district at 439 W. Columbia Avenue. Stated the petitioner came before the Zoning Board in December of 2012, appealing a decision of the Zoning

Administrator; at that meeting the Zoning Board made a ruling and determined that the Zoning Administrator acted properly to deny a two-unit residential use at the property as a legal non-conforming use. The Zoning Board made the determination that the property could only be used in compliance with the "C-3 Intensive Business" zoning district, and the question of legal nonconforming status for the property is not in question at today's meeting.

Mr. Perian noted the request for a use variance to allow two residential apartments on the property was initially heard at the May 14, 2013, Zoning Board of Appeals meeting and the request was denied, with the ZBA board finding that the property could reasonably be used in conformance with the permitted uses in this zoning district. Stated for this request it is the Zoning Board's responsibility to determine if the additional information supplied by the appellant meets the Use Variance Standards for an unnecessary hardship as outlined in the ordinance under section 1234.04 to allow residential uses in the C-3 zoning district for property located at 439 W. Columbia Avenue. Stated staff believes the applicant did not provide any new information with respect to this request to show that the building, structure and land cannot be reasonably used in a manner consistent with the uses allowed in the C-3, C-2, C-1, or O-1 zoning districts in which the property at 439 W. Columbia is located. If the appellant were to apply to the City to use the property for any number of commercial uses allowed in the C-3 district, the request would be approved. Therefore, there is no unnecessary hardship and the variance should be denied. Mr. Perian stated for these reasons and the reasons cited in the staff report the planning staff is recommending denial of appeal Z-06-13. Mr. Perian noted a correspondence was received today regarding a possible issue of a conflict of interest with the law firm representing Mr. Christian; asked if the City Attorney or Mr. Karre wished to speak regarding this matter.

Mr. Marcel Stoetzel, Assistant City Attorney, stated it was his understanding there are three zoning board members that have been represented by Mr. Nelson Karre's law firm; stated those members at this time may disclose for the record a comment regarding any possible conflict of interest.

Mr. Greg Dunn acknowledged he and his company had done business with Vandervoort, Christ & Fisher law firm and currently has a civil action; noted Mr. Karre is not his attorney currently and has had a personal relationship with both the appellant and attorney, but feel it is not impacted by this appeal and have in the past asked to abstain when it has been a direct financial relationship with the appellant or business relationship. Said he does not believe in this case his objectivity is biased in any way with Mr. Karre's law firm.

Mr. Carlyle Sims stated Mr. Karre has represented his wife and himself with estate planning, etc. and said his family business has done a great deal of business with Mr. Christian of which he has not been associated with, as his son Andy handles the business, and feels he can provide a good decision.

Mr. John Stetler stated his company had done business with Mr. Christian, and Mr. Karre has represented that company within the last 12 months with nothing currently pending with either party. Stated he has no conflict of interest at this time.

Mr. Nelson Karre, Vandervoort, Christ & Fisher, P.C., stated he was here to support Mr. Christian and will try to answer any questions; noted he would not review all of the history but would like to emphasize a few points about this application; said this property has had 60 plus years of apartment use that started at a time when the Battle Creek Township zoning ordinance allowed apartments in what was then a form of commercial zoning in Battle Creek Township which has continued without

break for all that time. Stated Mr. Christian or his family have been the owner of the business at this location and as a young child Mr. Christian lived across the street and noted the building had 3 apartments #445, #447 Columbia Ave. and #7 Menno Place with a small building at that time in the front numbered #449 Columbia Ave. Said in the early 70's the building in the front was removed and the #'s were changed where #445 became #439 and #447 continued and apt. #7 continued at least two have been apartments and have had one office space for 40 years in what was the 3rd apartment.

Mr. Karre stated while this property is in a commercial zone, he believes it has been non-conforming and lawfully non-conforming back to the Battle Creek Township days and that the properties to the west and south being pure residential uses in both of those directions. Said there has been a residential use in this building for 60 years. Stated the information supplied today is important as reasonable ability of the applicant to put this building into a use that literally complies with the current zoning. Said Mr. Buller who is an inspector in this area for many years has done a courtesy walk through and is his belief this property would need substantial structural changes to bring into compliance and would be prohibitive and cost approximately \$100,000 to convert and comply with the building code and asked the board what is reasonable. Stated the use of the property as is would be consistent with the neighborhood as it has been in the past and that the lawful nonconforming use in the surrounding other properties are difficult to deal with. Mr. Karre stated the application and ordinance talks about self-created and how it is not self-created; stated Mr. Christian did not start this house as residential, that it had always been and did not cause this problem; Battle Creek Township allowed this use and is a grandfathered use and any alternative would be to not impose on Mr. Christian to not allow the residential use.

Mr. Karre referenced the Polk directory where the city staff suggest it is not reliable; he has provided 60 years of pages from the city directory for 439, 445, 447 W. Columbia and 7 Menno Pl. with a reference to different persons living at those addresses which is consistent of being apartments. Said the Polk directory cannot be wrong for all of those years and feels you can conclude it has always been used as an apartment. Stated the board should allow it to be used as it had been for the past 60 years.

Mr. John Stetler asked staff if it were converted to any other C-3 district use would it need to be American Disability Act compliant. Mr. Perian stated he was not sure as he is not a building inspector; said it is now being used as a commercial use and in his opinion it demonstrates it can and is being used as a commercial business. Mr. Karre stated yes #439 is being used for a commercial use that started when it was Battle Creek Township, that does not mean the other two apartments #447 and #7 Menno can simply be converted to a commercial use without the expense of bringing them into compliance reasonably.

Mr. Glenn Perian stated there is any number of buildings within the city that have had a change in use and there is an expense to making it compliant with any and all codes. Said Mr. Karre noted the cost example of \$100,000 and to him to convert a commercial building that amount does not seem unreasonable.

Mr. Nelson Karre asked Mr. Christian if he wanted an opportunity to speak. Mr. Rick Christian stated \$100,000 dollars to put a new floor system in the building would also involve removing the electrical, plumbing, heating and removal of kitchen and baths etc. Said if building a new home in would be much less, but in a home that is 100 years old it would be a tremendous job to do this and he is not in a

situation financially to do, nor would he want to if he could financially because the property does not warrant that amount of money to be put into it.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE USE VARIANCE REQUEST APPEAL #Z-06-13 FOR 439 W. COLUMBIA AVENUE TO ALLOW TWO RESIDENTIAL APARTMENTS ON A PROPERTY ZONED “C-3 INTENSIVE BUSINESS DISTRICT” AS PRESENTED; SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. John Stetler stated to convert the use there is a huge amount of changes required such as doorways etc. Stated this work would have to be done if they convert the use. Said Mr. Christian was asked to provide additional information and feels they have done so.

Mr. Greg Dunn referenced the staff report where it noted there was a period of time they were not used and if the use was grandfathered, what grounds does the city say it is not grandfathered and if there was a grandfathered procedure for areas that used to be the Battle Creek Township. Mr. Perian stated yes there is a procedure and it was followed last December with the decision of the Zoning Administrator saying that the property was not considered a to be a legal nonconforming property; said that decision was appealed by Mr. Christian and brought to the Zoning Board of which made a decision and the applicant had an opportunity to appeal that decision and had not. So the decision of the Zoning Board from last December stands as the property is not considered to be legal nonconforming based on that decision. Said because of that decision Mr. Christian has applied for a use variance based on the decision that the property is not considered to be a legal nonconforming property.

Mr. Carlyle Sims asked how accurate was the Battle Creek Township's records. Stated knowing Mr. Christian's father and that those apartments have been there for many years. Said he voted against this last time, but has a problem with this and properties that if you have a fire they cannot be rebuilt and have a situation here where it has been residential when it was Battle Creek Township for years. Said he has a problem saying no to this and remembers this building and its use and would be costly to change its use.

Mr. Greg Dunn stated his question was with the use variance and if a use variance was a proper remedy and has doubt if with the additional information if the zoning administrator made a proper decision back in December of this year; also the decision of this appeal board and now have a larger amount of supporting information. Said he is not sure if granting this appeal for a use variance is the proper way to remedy the other issue. Said he has concerns about the staff report saying there is not substantial new evidence to grant this appeal based on this zoning use change, feels the city needs to look at the rules of what constitutes as new information.

Mr. Jim Moreno asked Glenn Perian and Christine Hilton if when the original appeal was denied the remedy would have been to take it to the Circuit Court to overturn the decision made by the Zoning

Board of Appeals; asked if this short circuiting that process by coming back and requesting a use variance or should it have gone through to Circuit Court.

Mr. Glenn Perian stated there is two parts to your question; 1. There was the question if this was a legal non-conforming property; said the Zoning Administrator made a decision to deny and the applicant was not happy with that decision and had a right to appeal to the Zoning Board to make a determination; the Zoning Board made a determination in December to uphold the decision to deny made by the zoning administrator. If the appellant did not like that decision they have another opportunity to appeal to Circuit Court, which never happened. Said the legal non-conforming question is based on the decision of the zoning board last year, and now the remedy is to have the residential structures at the property was to come to the board for a use variance, which occurred back in May of this year; that appeal was denied. Now the appellant is coming back with new information that staff believes is referencing the non-conforming question that has already been answered. 2. Mr. Perian said the question to be answered today is, is the information submitted and Mr. Karre's presentation warrant a use variance to allow residential use on the commercial property.

Ms. Christine Hilton, Planning Supervisor stated the applicant did have the right to appeal the Zoning Board decision for a use variance to the Circuit Court and his attorney at that time had submitted an appeal; but withdrew the appeal and the city had issued a citation for the violation and Mr. Christian has now contracted a new attorney and applied for this new appeal for a use variance.

Mr. John Stetler, Chairperson said if there were no other questions he asked for a vote and noted that a vote for a yes would approve his continued use and a vote no would disapprove.

Mr. Karre stated his opinion that a no vote means the motion did not pass and does not mean there would not be another motion to maybe fine tune this and does not mean it has to end.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; THREE IN FAVOR (DAVIS, SIMS, AND STETLER); THREE OPPOSED (DUNN, HEISLER AND MORENO), MOTION FAILED.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. DELAND DAVIS TO APPROVE THE NOVEMBER 12, 2013 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. CARLYLE SIMS.

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED –MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF: None

ADJOURNMENT: Meeting was adjourned at 4:37P.M.

Submitted by: Leona A. Parrish, Administrative Assistant, Planning Department